82-1420

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

No. _____

IN RE: ESTATE OF JAMES H. DUMAS

Emily SANFORD and Jackie SANFORD,
Appellants

vs.

Daisy E. DUMAS,
Appellee

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

JURISDICTIONAL STATEMENT

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Attorney for Appellants

QUESTIONS PRESENTED BY APPEAL

WHETHER §§ 732.301 and 732.507, FLORIDA STATUTES, CREATING AN IRREBUTTABLY PRESUMED INTENT THAT THE DECEDENT WOULD HAVE LEFT HIS ENTIRE ESTATE TO HIS ESTRANGED SPOUSE OF SIXTEEN DAYS, DENIES TO APPELLANTS THE DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS .

INDEX

CITATION OF AUTHORITIES

OTHER AUTHORITIES

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THE STATE OF FLORIDA, FIFTH DISTRICT

JURISDICTIONAL STATEMENT

I. OPINIONS BELOW

The opinion of the District Court of Appeal, sought to be reviewed here, is reported at 413 So.2d 58, and a full copy is contained at Page 2 of the Appendix. The opinion of the trial court, favoring Appellants, is unreported; a copy is contained at Page 5 of the Appendix. The Supreme Court of Florida denied review by an order as yet unreported; a copy of that Order is contained at Page 8 of the Appendix.

II. GROUNDS FOR INVOCATION OF JURISDICTION

This appeal invokes the jurisdiction of the Court under 28 U.S.C. §1257(2). Appellants seek review of a decision of the District Court of Appeal, Fifth District of Florida, in favor of the validity of FLA. STAT. §§732.301 and 732.507. Appellants were sole beneficiaries of the last Will of James H. Dumas, and numerous prior wills, but he contracted his eighth marriage seventeen days before his death. Under the statutes in question, the new spouse was entitled to an intestate share of the estate. Since the decedent was childless, she would have received the entire estate. Appellants claimed a property right in their bequests which afforded them a constitutional right of due process. They demanded a hearing and opportunity to show that the decedent did not intend to favor his latest spouse. They also alleged that the statutes treated them arbitrarily and capriciously. They claimed such rights under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and parallel provisions of the Constitut ion of Florida.

The trial court construed the statute to allow Appellants a right to be heard, and found that the true

intent of the decedent was to continue his beneficence toward them.[1] The court found that ".[2] . . As thus construed, the statutes are constitutional."[2]

The appellate court, in the decision appealed from, found that the statutes were absolute and not subject to rebuttal, notwithstanding Appellants' constitutional challenge to the rigidity of that interpretation. Discretionary review was denied by the Supreme Court of Florida on November 24, 1982.[3] This appeal was filed January 19, 1983. The Court has jurisdiction pursuant to 28 U.S.C. §1257(2) to review by appeal any decision of the highest accessible court of a state, where the constitutionality of a state statute is drawn in question as being repugnant to the Federal Constitution, and the decision is in favor of its validity.

III. CONSTITUTIONAL PROVISIONS INVOLVED

The applicable provisions of the United States Constitution are found in Article XIV, §1:

> All persons born or naturalized in the

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1. The trial court's admission of the Will to probate and its factual findings that the decedent intended Appellants to continue as his beneficiaries were undisturbed by the appellate court. The widow would nevertheless be entitled to an elective share of 30% under FLA. STAT. §732.201.

2. A-6, ¶6.

3. A-8.

United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridges the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV. STATEMENT OF MATERIAL FACTS

The decedent James Dumas was married at least eight times. Appellants are the descendants of his first wife, who died after 22 years of marriage. He never adopted appellants, but treated them as his own child and grandchild. Appellant Emily Sanford is executrix of his last Will, and beneficiary of this and numerous prior wills. In later life, the decedent married and divorced with increasing frequency. His fourth, fifth and seventh marriages were to Mildred Dumas. His eighth marriage was to the Appellee Daisy Dumas, an acquaintance of five weeks. Sixteen days after the marriage, he left her, and he died the next morning in the home of his sixth wife, Eleanor. Hours before his death, he declared that Appellee was not going to spend his money.

The original of the Last Will was never found, and Appellee attempted to show that he had destroyed it with the intent of revoking it. Nevertheless the trial court found that the Will had been lost or destroyed by an "unknown agency" without any intent to revoke it, and that the evidence showed "a continuing intent by the decedent that his Will favoring the Petitioners

[Appellants here] remain unrevoked."

FLA. STAT. §732.507(1) provides:

> Neither subsequent marriage nor subsequent marriage and birth or adoption of lineal descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

FLA. STAT. §732.301 provides:

> When a person marries after making a will and the spouse survives the testator, the surviving spouse shall receive a share in the estate of the testator equal in value to that which the surviving spouse would have received if the testator had died intestate, unless:
>
> (1) Provision has been made for, or waived by, the spouse by prenuptial or postnuptial agreement;
>
> (2) The spouse is provided for in the will; of
>
> (3) The will discloses an intention not to make provision for the spouse.

Upon the death of James Dumas, Appellee commenced administration of his estate as if intestate, and professed no knowledge of the existence of any will. By objection to her qualifications as personal representative, Appellants raised the issue of the Will's existence, and of their entitlement to its provisions notwithstanding the statutes favoring the pretermitted

spouse. Their Amended Objections recited:

> * * * 16. If Respondent [Appellee] is entitled to the entire estate by virtue of said statute, said statute may have the unintended effect of a complete revocation of decedent's will.
>
> 17. Said statute, if so construed, creates an arbitrary, capricious and irrebuttable presumption that decedent would have amended his will to leave his entire estate to Respondent.
>
> 18. If petitioners [Appellants] had been the natural descendants of the decedent, their interest in the estate would not be subject to being entirely extinguished by virtue of a two-week marriage. Nevertheless if said statute precludes petitioners from demonstrating that decedent considered them his adoptive children and the natural objects of his bounty, then said statute creates an arbitrary and capricious classification that a decedent upon marriage would revoke any will to a non-lineal descendant. Such arbitrary classification and presumption denies to petitioners the equal protection of law secured to them by the Declaration of Rights of the Florida Constitution and by the 14th Amendment of the United States Constitution.[4]

In their brief in the trial court, Appellants set the

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4. A-12.

issue as follows:

POINT I

FLA. STAT. §§ 732.301 AND 732.507 DO NOT BAR THE CLAIMS OF PETITIONERS.

A. THE STATUTORY PRESUMPTION OF BENEFICENCE TOWARD A PRETERMITTED SPOUSE IS REBUTTABLE.

* * *

B. IF THE PRETERMITTED SPOUSE STATUTE CREATES AN IRREBUTTABLE PRESUMPTION IN FAVOR OF RESPONDENT, IT IS VIOLATIVE OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FLORIDA AND FEDERAL CONSTITUTIONS.

In passing upon these claims, the trial court held:

> FLA. STATS. §§ 732.301 and 732.507 declare that subsequent marriage of a testator shall not revoke a prior will, but the pretermitted spouse shall receive an intestate share of the estate. A literal interpretation of the statute would award the entire estate to the respondent, notwithstanding the manifest intent of the decedent. To thwart that intent, without opportunity of the petitioners to demonstrate such intent, may cast doubt on the validity of the governing statutes. Upon the peculiar facts of this case, the Court construes the statutes to permit the

> petitioners an opportunity to be heard and to present evidence in rebuttal of the statutory presumption in favor of a pretermitted spouse. As thus construed, the statutes are valid.

In defense of their victory in the trial court, Appellants asserted on appeal:

> Once the will has been admitted to probate, Appellees have at least a qualified property right in their bequests under that Will. Such a property right cannot be divested without due process of law. If the pretermitted spouse statute, FLA. STAT.§733.507 (sic), conclusively establishes the interests of the appellant Daisy, without opportunity to submit evidence of an intention not to provide for the new spouse, then the statute is invalid.

The appellate court, in the holding now appealed, stated:

> That statute does not raise a mere presumption, it is absolute; not subject to rebuttal,. . . .

V. SUBSTANTIALITY OF QUESTIONS INVOLVED

The questions presented are of interest to more than these parties or their particular factual situation. These questions are likely to recur, and there is an absence of guidance from this Court or from the Courts of Appeal on the subject. At issue is the power of a State to prescribe a class of beneficiaries who

may be totally and irrevocably deprived of their adjudicated interest in an estate, duly proved to be in accord with the decedent's intent, because the State has conclusively presumed that the decedent did not have such an intent. The gravity of the injury is compounded by the caprice with which it falls; the mere existence of a lineal descendant, or decedent's death in a jurisdiction adopting the Uniform Probate Code, would have allowed Appellants to present their evidence and receive a fair hearing.

The questions in this appeal fall into two major categories. The first is whether the State of Florida can admit to probate a Will which gives Appellants at least a qualified property interest in the estate of the decedent, and then utterly abrogate that interest without hearing or any opportunity to show that the interest is in accord with the actual intent of the Testator. Assuming that the State could do so, the second question is whether it may fix an arbitrary class of beneficiaries which is subject to such treatment, when other beneficiaries are not.

A. Whether the statutes in question deny due process of law.

These appellants do not question the broad power of the states to deal generally with the subject of decedents' estates. Indeed, the right to make a will at all is purely one conferred by the legislature. However, in the creation of such rights or privileges, the legislature is circumscribed by the Constitution. Here, the State of Florida has created a means by which a citizen may direct the disposition of his estate upon death. This decedent complied with the statutory

conditins and his Will has been duly admitted to probate.

Lkewise the State of Florida may prescribe minimal shares of an estate which are to be distributed to spouse or dependents notwithstanding the intent of the decedent or the provisions of the will. In this case, FLA. STAT.$732.207 provides an elective share of 30% which may be demanded by a dissatisfied spouse in lieu of the provisions made for him or her in the Will.

The State may even provide that marriage should act as a revocation of a Will. The common law so provided; marriage and the birth of a child revoked the Will of a male, while marriage alone revoked the Will of a female. But here, the common-law rule has been renounced by the State, for FLA. STAT.$732.507 expressly disclaims any automatic revocation of the Will upon remarriage.

The pretermitted spouse provisions can thus be seen in their true light: a legislative pronouncement of the presumed intent of the bridegroom. The statutes pretend to no more. The existence of a prenuptial or postnuptial agreement, or some indication in the Will that the omission of the new bride was intentional, will suffice to neutralize the effect of the statutes.

Though the privilege of testamentary disposition is legislative in its origin, the relationship between the decedent, his family (whether or not formally adopted) and his estate is an intensely private one and the State's interest in intruding upon that relationship must be compelling. If a citizen is free to choose his own executors[5] or if his illegitimate children may not be

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5. Reed v. Reed, 404 U.S. 535 (1971)

barred from his estate[6] or his custody,[7] then the State of Florida has no legitimate interest in establishing an irrebuttable presumption that this decedent's testamentary intent was exactly the opposite of what his Will declares.

In Trimble v. Gordon, the opinion of the Court addresses the "presumed intent" of the testator; in that case, a so-called "statutory will" was prescribed by the Illinois intestacy statutes, presuming that a decedent would disinherit his illegitimate children. The Court noted:

> . . . With respect to any individual, the argument of knowledge and approval of the state law is sheer fiction. The issue therefore becomes where the burden of inertia in writing a will is to fall. At least when the disadvantaged group has been a frequent target of discrimination, as illegitimates have, we doubt that a State constitutionally may place the burden on that group by invoking the

6. Trimble v. Gordon, 430 U.S. 762 (1977)

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7. Stanley v. Illinois, 405 U.S. 645 (1972)

8. 430 U. S. 763, 776 n.16. The Court cites with approval Eskra v. Morton, 524 F.2d 9 (7th Cir. 1975; Stevens, J.), which stated [at 14]:

> In our judgment, the presumed intent of intestate decedents is an unacceptable justification for a decision by the state which the state would otherwise be unable to justify. It is unacceptable, not because

the ory of "presumed intent."[8]

It remains for the briefs on the merits to explore fully the true limits of the State's powers of speculation; but if a state may not "presume" the intent of an intestate decedent, then a fortiori it may not do so, irrebuttably, in flat contradiction to a probated Will.

B. Whether the statutes in question deny the equal protection of the laws.

Appellants here assert that they should have been given an opportunity to be heard before the testator's intent was conclusively "presumed". But the anomaly of the statute is that if they had been the blood or adopted children of the decedent rather than his stepchildren, they would not have been required to make such a showing. The bequest to them would have been preserved, to the extent of one-half of the estate, even if the decedent had truly intended his new spouse to receive everything. Thus the statutes are at the same time overinclusive, under the argument first urged above, and underinclusive. Indeed, if the decedent had simply fathered and disinherited a child during his life, the bequest to Appellants would have been substantially

---

> it is irrational to assume that there are a significant number of private citizens who would intentionally punish children for the transgressions of their parents, but rather because such motivation on the part of the state is offensive to our concept of due process.(emphasis supplied.)

preserved. If a child of the decedent had simply existed, then even the full application of the conclusive presumption in favor of the wife would have given her only 50% of the estate.[9] But the remainder of the estate would not have passed to the blood child; it would have passed to Appellants as beneficiaries under the Will.

In Trimble v. Gordon, supra, the Court found that the State of Illinois could not create arbitrary and insurmountable barriers against inheritance by illegitimate children. Nevertheless the Court has thus far failed to acknowledge that illegitimacy of itself is a suspect classification demanding "strict scrutiny" under traditional Equal Protection analysis. Instead, the Court appeared to focus on the fact that neither their parents' conduct nor their own status was subject to control by the children. Similarly, these Appellants could not actually control the events which dictate their inheritance. Their stepfather took every step necessary to effect his intent by the simple means of making a Will in their favor. He did not know that the intent he declared in his Will and reaffirmed until hours before his death would be thwarted by his

---

9. The intestate share is reduced to one-half of the estate where there are children of a previous marriage.

10. The estate is principally composed of personal property which would be controlled by the laws of the decedent's final domicile. <2-301 of the model Unitofm Probate Code, in those states which have adopted it, would have protected the decedent's intent; it provides:

> (a) If a testator fails to provide a will for his surviving spouse who married the testator after the execution of the will,

retirement residence in the State of Florida.[10]

VI. CONCLUSION

For the reasons urged herein, the Court should note probable jurisdiction of this Appeal and direct the filing of briefs on the merits.

Respectfully submitted,

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the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence (Emphasis supplied)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 1983, three copies of this Jurisdictional Statement have been furnished by United States Mail, postage prepaid, to William H. Stone, Esquire, P.O. Drawer 520 Clermont, Florida 32711; John I Merritt, 1500 E. Orange Avenue, Eustis, Florida 32726; and Lester A. Lewis, P.O. Box 390, Daytona Beach Florida, 32015.

C. Allen Watts

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT
OF THE STATE OF FLORIDA

APPEAL DOCKET No. 81-475

IN RE: ESTATE OF JAMES H. DUMAS, deceased.
DAISY DUMAS,
Appellant,

vs.
EMILY SANFORD and
JACKIE SANFORD,
Appellees.)

Opinion filed March 17, 1982

Appeal from the Circuit Court
for Volusia County,
J. Robert Durden, Judge.

William H. Stone, Clermont
and Lester A. Lewis of Smalbein,
Eubank, Johnson, Rosier & Bussey,
P.A., Daytona Beach,

for Appellant.

C. Allen Watts, DeLand,
for Appellees.

DAUKSCH, C. J.

This is an appeal from an order revoking letters of administration and granting probate of a lost will.

James H. Dumas died, leaving his wife Daisy. Sometime before his death, and before his marriage to Daisy, the decedent had purportedly made a will naming appellees as beneficiaries. The appellees are not lineal descendants of the decedent and are not legally related to the decedent. Appellee Emily Sanford is a daughter of a previous spouse of the decedent and appellee Jackie Sanford is her child.

The appellees were permitted by the trial court to show they had been provided for in a will of the decedent by introducing into evidence a copy of a will. The will had been executed before the marriage between the decedent and Daisy and the trial judge held it to be the "last will" of the decedent. There was conflicting evidence as to whether the decedent still intended to provide for the appellees subsequent to his marriage to Daisy Dumas. However, the conflicting evidence as to the decedent's intentions is irrelevant because the statutory law is clear on the subject and controlling in t his case.

The applicable statute is section 732.301, Florida Statutes (1981), and it provides that a person who makes a will and then marries a person not provided for in the will is presumed to have meant to leave that spouse an intestate share in his estate. The statute has some limited exceptions, none of which are applicable here based on the proof submitted to the

trial court. The statute is called the Pretermitted Spouse statute and reads as follows:

> When a person marries after making a will and the spouse survives the testator, the surviving spouse shall receive a share in the estate of the testator equal in value to that which the surviving spouse would have received if the testator had died intestate unless:
>
> (1) Provision has been made for, or waived by, the spouse by prenuptial or postnuptial agreement;
>
> (2) The spouse is provided for in the will; or
>
> (3) The will discloses an intention not to make provision for the spouse.
>
> The share of the estate that is assigned to the pretermitted spouse shall be obtained in accordance with section 733.805.

Because the decedent in the instant case died leaving no lineal descendants and was survived by his wife, the appellees are not entitled to share in his estate, regardless of the will. A pretermitted spouse receives the entire estate where no lienal descendants survive the decedent. Hoffman v. Kohns, 385 So.2d 1064, 1069 (Fla. 2d DCA 1980). Section 732.102, Florida Statutes (1981) says:

> (1) The intestate share of the surviving spo use is:
>
> (a) If there is no surviving lineal

descendant the entire intestate estate.

When section 732.301, Pretermitted spouse, and section 732.102, Share of spouse, are read together there is not getting around it - the widow takes the entire intestate estate when no lienal descendant survives the decedent.

The trial court erred in its determination "Upon the peculiar facts of this case, the court construes the statutes to permit the petitioners (appellees) an opportunity to present evidence in rebuttal to the statutory presumption in favor of a pretermitted spouse." That statute does not raise a mere presumption, it is absolute; not subject to rebuttal, and no exception should be extended to include a class not clearly comprehended by the statute. See Estate of Ganier, 402 So.2d 418 (Fla. 5th DCA 1981).

The order is reversed and this cause remanded for further proceedings consistent with this decision.

REVERSED AND REMANDED

Appendix

**IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA**

CIRCUIT CIVIL No. 79-1260-02-D

IN RE: ESTATE OF JAMES H. DUMAS,
Deceased.

ORDER

This cause is before the court upon objections to the qualifications of the personal representative, based upon an accompanying prayer for admission to probate of a lost will favoring the petitioners Emily and Jackie Sanford. Having reviewed the evidence and the legal memoranda submitted by counsel for the respective parties, the Court finds and concludes as follows:

1. The Court has jurisdiction of the subject matter and of the parties.

2. The decedent executed a last will and testament on January 31, 1979, favoring the petitioners Emily and Jackie Sanford.

3. Said will was subsequently lost or destroyed by an unknown agency without any intent by the decedent to revoke said will.

4. Said will was executed in conformity with the laws of Florida and its contents were duly established by the submission of a true copy of the executed original will, and by the testimony of Howard Warner, Esquire, as an attesting witness to the will.

5. The Court has heretofore excluded, as incompetent, the proffered testimony of the respondent as to the alleged physical destruction of the original of the propounded will. Even if such testimony had been admitted, the Court is of the opinion that the weight and credibility of the evidence shows a continuing intent by the decedent that his will favoring the Petitioners remain unrevoked.

6. FLA. STATS. §§732.301 and 732.507 declare that subsequent marriage of a testator shall not revoke a prior will, but the pretermitted spouse shall receive an intestate share of the estate. A literal interpretation of the statute would award the entire estate to the respondent, notwithstanding the manifest intent of the decedent. To thwart that intent, without opportunity of the petitioners to demonstrate such intent, may cast doubt on the validity of the governing statutes. Upon the peculiar facts of this case, the Court construes the statutes to permit the petitioners an opportunity to be heard and to present evidence in rebuttal of the statutory presumption in favor of a pretermitted spouse. As thus construed, the statutes are valid.

7. Petitioners have sustained the burden of overcoming the statutory presumption that the decedent would have intended his entire estate to pass to the respondent, and have demonstrated a constant testamentary intent in their favor notwithstanding the many marriages and divorces of the decedent.

Whereupon it is:

ORDERED AND ADJUDGED

1. The petition for probate of lost will is granted, and the will dated January 31, 1979 attested by

Howard S. Warner and Nancy A. Pritchard is admitted to probate and record. The full and precise terms and provisions thereof are contained in the copy attached as Exhibit A and are made a part of this Order as fully as if recited at length herein.

2. The letters of administration heretofore issued to Daisy Dumas are revoked.

3. Letters of Administration shall issue to Emily Sanford upon her filing the oath as required by law.

4. Daisy Dumas shall have 40 days within which to file her petition, if any, for elective share as prescribed by law.

5. Upon the issuance of Letters of Administration to Emily Sanford, Daisy Dumas shall forthwith surrender to the said Emily Sanford all assets and proceeds of assets of the decedent having come into her possession or control during the course of administration. Daisy Dumas shall further within 30 days from the date of this Order file her final accounting with the Court.

6. The Court reserves jurisdiction over the parties to enter such other and further orders as may be necessary to carry out the terms of this Order.

DONE AND ORDERED in Chambers at Daytona Beach, Florida, this 11th day of March, 1981.

/s/ J. Robert Durden
Circuit Judge

Appendix

SUPREME COURT OF FLORIDA

Wednesday, November 24, 1982

CASE NO. 62,055

EMILY SANFORD and

JACKIE SANFORD,

Petitioners,

vs.

ESTATE OF JAMES H. DUMAS deceased

DAISY DUMAS

Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ALDERMAN, C.J., BOYD, McDONALD and EHRLICH, JJ., Concur ADKINS and OVERTON, JJ., Dissent

A TRUE COPY
TEST:
SID J. WHITE
CLERK SUPREME COURT
By: /s/ Debbie Causseaux
Deputy Clerk

Hon Frank J. Habershaw, Clerk
Hon V.Y. Smith, Clerk
Hon J. Robert Durden, Judge
C. Allen Watts, Esquire
William H. Stone, Esquire
Lester A. Lewis, Esquire
Charles J. Johnson, Jr., Esquire

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT

IN AND FOR VOLUSIA COUNTY, FLORIDA

File No. 79-1260-02

IN RE: ESTATE OF JAMES H. DUMAS, Deceased

AMENDED OBJECTION TO QUALIFICATIONS OF PERSONAL REPRESENTATIVE, PETITION TO REQUIRE PRODUCTION OF WILL, PETITION TO REQUIRE PRODUCTION OF WILL, AND/OR PETITION FOR PROBATE OF LOST WILL

The petition of EMILY SANFORD and JACKIE SANFORD, by and through their undersigned attorney, respectfully show:

1. The administration of this estate is now pending before the court, the Letters of Administration have been entered herein upon the petition of DAISY E. DUMAS, surviving spouse, who averred therein that she was unaware of any unrevoked wills or codicils of the deceden t.

2. Petitioners have previously and timely filed a claim herein setting forth their rights under a Last Will and Testament of the decedent dated January 31, 1979. A true copy of said will is attached as Exhibit "A".

3. Said claim sufficiently apprises the Respondent DAISY E. DUMAS of the substance of the rights which petitioners assert in the Estate of the decedent; but this amended statement is filed in the form of an objection to the qualification of the personal representative, in order to more clearly set forth the precise nature of petitioners' rights.

4. The Last Will and Testament of the decedent dated January 31, 1979 was executed in the presence of Howard S. Warner and Nancy A. Pritchard as attesting witnesses when the decedent was at least 18 years of age.

5. The original of that will was delivered to the custody of the Testator, but after the death of decedent said original will became lost or destroyed without any intent on the part of the decedent to revoke the instrument.

6. Petitioner Emily Sanford is nominated as Personal Representative of said Last Will and Testament, to serve without bond.

7. Respondent Daisy E. Dumas is the sole heir at law of the decedent and, but for the will dated January 31, 1979, would be entitled to the entire estate of decedent.

8. Decedent was married at least 5 times, most recently to the Respondent two (2) weeks before his death. Petitioners have been life-long close friends of decedent, and throughout his many marriages decedent has from time to time executed wills recognizing petitioners as the natural objects of his bounty.

9. The will of January 31, 1979 was executed at a time when decedent was married, but said will makes

no provision for his wife.

10. Subsequent to his marriage to Daisy E. Dumas on June 15, 1979, decedent made no new will excluding petitioners from a share of his estate.

11. Petitioners verily believe that the Last Will and Testament executed by decedent on January 31, 1979 was in full force and unrevoked at his death.

12. Petitioners verily believe that Respondent is the custodian of said will and has it under her control or possession and wilfully refuses to deposit said will with the court as requir ed by law.

13. As a result petitioners have been required to retain an attorney to handle these proceedings, to whom they are obligated to pay a reasonable fee.

14. As a further result of Respondent's wilfull failure to file the will petitioners have been damaged by being deprived of their rightful share of the estate according to the terms of said will.

15. Irrespective of said will, the Respondent Daisy E. Dumas claims the entire estate by virtue of Florida Statute 732.507.

Said statute nevertheless declares that subsequent marriage shall not revoke the will of any person.

16. If Respondent is entitled to the entire estate by virtue of said statute, said statute may have the unintended effect of a complete revocation of decedent's will.

17. Said statute, if so construed, creates an arbitrary, capricious and irrebuttable presumption that decedent would have amended his will to leave his

entire estate to Respondent.

18. If petitioners had been the natural descendants of the decedent, their interest in the estate would not be subject to being entirely extinguished by virtue of a two-week marriage. Nevertheless if said statute precludes petitioners from demonstrating that decedent considered them his adoptive children and the natural objects of his bounty, then said statute creates an arbitrary and capricious classification and an irrebuttable presumption that a decedent upon marriage would revoke any will to a non-lineal descendant. Such arbitrary classification and presumption denies to petitioners the equal protection of law secured to them by the Declaration of Rights of the Florida Constitution and by the 14th Amendment of the United States Constitution.

WHEREFORE, Petitioners pray that an Order by entered requiring Respondent to deposit the will with the Court as required by law and that damages and attorneys fees be awarded, or in the alternative that an Order be entered establishing the Last Will and Testament of James E. Dumas dated January 31, 1979, reciting and preserving the full and precise terms and provisions of that will as contained in the attached copy, and admitting it to probate, and that Letters of Administration be granted to the petitioner, EMILY SANFORD, and that Respondent be required to account immediately for all administration of the estate to the time of said Order, and that petitioners be awarded the full amount of the bequests to them under the Last Will and Testament of the decedent.

WATTS, BIERNACKI & FROST, P.A.
/s/ C. Allen Watts
C. Allen Watts
P.O. Box 3130
DeLand, Florida 32720

Attorney for Petitioners
(904) 736-7700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing document has been mailed to JOHN I. MERRITT, ESQ., 1500 E. Orange Ave., Eustis, Florida, 32725, this 25th day of January 1980.

/s/ C. Allen Watts
Attorney

Exhibit A
LAST WILL AND TESTAMENT
OF
JAMES H. DUMAS

KNOW ALL MEN BY THESE PRESENTS:

That I, JAMES H. DUMAS, residing at DeBary, County of Volusia and State of Florida, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking any and all prior Wills and Codicils made by me at any time heretofore.

FIRST: I direct that all debts which I am legally obligated to pay at the time of my death, my last illness, funeral expenses and costs of administration of my estate shall be paid as soon as practicable after my death.

SECOND: I give and devise the sum of Ten Thousand Dollars ($10,000.00) to my friend, JACKIE SANFORD.

THIRD: All the rest, residue and remainder of my

estate, of whàsoever nature and wheresoever situated, including the proceeds of any policy or policies of insurance on my life payable to my estate or to my personal representative, I give and devise to my friend, EMILY SANFORD.

FOURTH: I nominate, constitute and appoint my friend, EMILY SANFORD as personal representative without bond of this my Last Will and Testament. If, for any reason, my said friend, EMILY SANFORD, is unable or unwilling to act in such capacity, then in such event I nominate, constitute and appoint JACKIE SANFORD, as personal representative without bond of this my Last Will and Testament.

FIFTH: I hereby authorize and empower my personal representative hereinabove named, if and wherever, in the settlement of my estate, he or she deems it advisable, at his or her discretion, to sell the whole or any part of my property, real, personal or mixed, at public or private sale, and to execute and deliver all deeds, instruments of transfer and other writings necessary to pass the proper title thereto. This power of sale shall be deemed discretionary and not mandatory.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 31st day of January, 19

/s/ James H. Dumas (SEAL)

The foregoing instrument, consisting of this and one other typewritten page, was signed, sealed, declared and published by the above named testator as his Last Will and Testament in the presence of us, the undersigned, who, at his special instance and request, do attest as witnesses, after said testator subscribed his name thereto, in his presence and in the presence of each other.

/s/ Howard S. Warner
of Orange City, Florida

/s/ Nancy A. Pritchard
of DeBary, Florida

IN THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT
STATE OF FLORIDA

APPEAL DOCKET 81-475

IN RE: ESTATE OF JAMES H. DUMAS, Deceased
DAISY DUMAS
Appellant

vs.

EMILY SANFORD and
JACKIE SANFORD,
Appellees

NOTICE OF APPEAL
Filed January 20, 1983

Appellants, Emily Sanford and Jackie Sanford, appeal to the Supreme Court of the United States from the judgment of this Court reported in 413 So.2d 58 (Fla. 5th DCA 1982), appeal denied _____ So. 2d ____(Fla. 1982) which upheld the validity of Section 732.301, Florida Statutes (1981).

This appeal is taken pursuant to 28 U.S.C. 1257(2). Appellants were sole beneficiaries of a will executed by James H,. Dumas, duly admitted to probate, but were denied any portion of the devise under the statute in question. Appellants have claimed that this statute is in violation of the Fourteenth Amendment to the Constitution of the United States, in that it deprives an arbitrarily-selected class of beneficiaries of their property interest in their bequest without due process of law. The final judgment from which this appeal is

taken is in favor of the validity of said statute.

/s/ C. Allen Watts
C. Allen Watts
Watts & Karl
Attorneys for Appellants
Post Office Box 493
224 West Rich Avenue
DeLand, Florida 32720
(904) 736-7700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Notice has been Furnished by United States Mail, postage prepaid, to William H. Stone, Esquire, P.O. Drawer 520 Clermont, Florida 32711; John I. Merritt, 1500 E. Orange Avenue, Eustis, Florida 32726; and Lester A. Lewis, P.O. Box 390, Daytona Beach Florida, 32015 this 18th day of January 1983.

/s/ C. Allen Watts
C. Allen Watts